IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 200 OF 2003.

IN

SUMMARY SUIT NO.6263 OF 1999

Vantage Advertising Ltd. .. **Plaintiff.**

v/s.

I.B. & W.Communications P.Ltd. .. **Defendent.**

Mr.B. Colabawala i/b. Mulla & Mulla & Craigie Blunt & Caroe, advocates for plaintiff.

Ms.Soma Singh i/b Vivek Sharma, advocate for defendant.

CORAM: D.G.DESHPANDE, J.

DATE : 29TH NOVEMBER, 2004.

P.C. :-

1. Heard advocates for plaintiff and defendant. Suit is filed by plaintiff for recovery of a certain sum of Rs.3,97,904/- arising out of their claim against the defendants. Initially there was an agreement between the parties orally. It was executed. Thereafter, after the period of agreement was over, it was reduced into writing and signed by the defendants. The agreement is in respect of the 22 sites for hoarding and non-payment

of charges by the defendants. The defences raised by the defendants are that firstly there was agreement to give 25 hoardings but only 22 hoardings are given. Second there were defects as per Exh.B in respect of 11 hoardings. They were not to the satisfaction of the client of the defendants. Thirdly, it was a trade practice that if defendants are not paid by his clients then the defendants are not bound to pay the plaintiff. None of these are valid defences in the sense that the agreement is in respect of 22 hoardings. Secondly, it was signed after the period was over. Therefore, as rightly argued by the advocate for the plaintiff that if there was any grievance in respect of implementation of the agreement, defendants should have refused to sign the agreement. Thirdly, even if defendants pointed out certain defects to the plaintiff in respect of the 11 hoardings as per Exh.B, nothing is stated that the defects were not removed by the plaintiff in letter at Exh.E of defendant dated 4/8/1997 pointing out those 20 places where the hoardings were to be. In this letter Exh.E which is subsequent to Exh.B there is no grievance made by the defendants about rectification of those sites. Therefore, there is no valid defence. In view of these facts, conditional leave to defend the suit is granted on defendants depositing a sum of Rs.3,97,904/- in this Court, within a period of six weeks from today.

.2. In the event of the defendants depositing the said amount, the suit to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within a period of 12 weeks from today and Affidavit of documents or list of documents within two weeks thereafter. Discovery or inspection of documents within two weeks thereafter. Suit to be placed on regular board for hearing thereafter.

3. In the event of the defendant's depositing the amount of Rs.3,97,904/- in the Court as aforesaid, the Prothonotary & Senior Master to invest the said amount with a Nationalised Bank, initially for a period of three years and to renew the same thereafter for suitable periods until further orders of the Court. Advocate for the plaintiff to follow the investment order with the Prothonotary & Senior Master.

4. If the defendant fails to deposit the aforesaid amount in the Court, liberty to the plaintiff to have the suit set down forthwith for exparte hearing. The summons for judgment disposed of. The Prothonotary and Senior Master to act upon ordinary copy of this Order duly authenticated. Certified copy expedited.